

NEW CASTLE CITY CHARTER CHANGES

EXECUTIVE SUMMARY

Prepared by: Daniel R. Losco, City Solicitor

In Spring, 2011, City Council appointed a committee of citizen volunteers with extensive experience in City government who, along with the Solicitor, were charged with undertaking a comprehensive re-drafting of the City Charter. The goals included modernizing the language and expressions to the extent possible, correcting for inconsistencies with state laws and constitutional principles; and clarifying the powers and procedures of City government. In addition, the Committee sought to add to or amend the existing Charter where it deemed it advisable and appropriate. What follows is an executive summary of the proposed new Charter highlighting many of the substantive changes made therein. It is not a substitute for an in depth examination of the proposed document by Council or the public at large, but should serve as a reasonable starting point for understanding the far reaching impact this document could have in the decades to come.

Section 1. City Boundaries: Instead of providing a metes and bounds surveyors description of the City limits which may change overtime due to annexations, the City's boundaries are now described by reference to "maps and plots" now or to be recorded with the Recorder of Deeds office.

Section 2. Establishment of Municipal Corporation: This section confirms the continued existence of New Castle as a municipal corporation and changes the official City name from the "Mayor and Council of New Castle" to the "City of New Castle".

Section 3. Annexation: This section replaces former Section 29 of the existing Charter in a greatly simplified manner. Instead of the nearly 4 pages of detailed annexation procedures found in the current Section 29 of the Charter, the proposed section incorporates by reference the provisions of Title 22, Chapter 1 of the Delaware Code which sets forth the annexation process all municipalities must follow. State law preempts local law on this subject.

Section 4. Officers, Qualifications and Salaries: The section replaces old Section 3 of the current Charter. It deletes the unconstitutional requirement that the Mayor and Councilpersons be a “freeholder”. It also clarifies qualifications for two existing City appointments: the City Solicitor and the City Engineer, and makes clear that they are appointed by and serve at the pleasure of Council. This section also permits Council to determine the salaries of elected officials by ordinance, but no raise ordained by Council may become effective until the next following election.

Section 5. Time of Elections: This Section was the subject of lengthy debate by the Committee. The Committee sought a means of increasing the terms of Mayor and Council to 3 or 4 years while also providing for a staggered Council to ensure continuity on Council from election to election. However, staggered 3 year terms will mean that elections will be required every year. Four year staggered terms would require an election every two years, the same as presently exists. The Committee voted to recommend 4 year staggered terms. Staggered 4 year terms would not commence until the 2013 City elections and would not affect the current 2 year terms of the sitting Council.

Section 6. Election Procedures: This Section largely tracks existing Section 5 of the current Charter. The revised section clarifies the fact that the Board of Elections has the power to ensure full compliance with Delaware State election laws (Title 15, Chapter 75 of

the Delaware Code), including noticing requirements. Polling place hours are adjusted from 8:00 am to 6:00 pm to 7:00 am to 7:00 pm. The payment by candidates of a filing fee of 1% of annual salary has been deleted. Voters must be age 18 at the time of the election. The Board of Elections is specifically authorized to appoint election officers and election inspectors.

Section 7. Taking Office: This Section makes clear that a newly elected officer may not assume office until at least 7 days following the election so as to be consistent with State law. The revised Section states that the City will pay for bonding the City Treasurer and confirms that Council may require other officers to be bonded.

Section 8. Continuity of Office: No change from the language of current Section 7 of the Charter.

Section 9. Vacancies: Existing Section 8 of the Charter concerning vacancies is retained, but the revised Section also requires the automatic removal of a City officer if they are convicted of a non-appealable felony. Also, a Council person may, by resolution following notice and a hearing, be removed from office for missing more than one-third of Council's regularly scheduled meetings in any calendar year.

Section 10. Fraudulent Voting/Penalties: The maximum possible fine for a person voting illegally in a municipal election was increased to \$1,000.00.

Section 11. Municipal Power: This Section supplants existing Section 16 of the Charter and provides a broad listing of the various powers of City government generally. Some of these powers were not specifically referenced in the current Charter. These powers include the power to litigate, to regulate roads and utilities, to establish and maintain parklands, to regulate construction, to establish fines for violations of ordinances, and to assess real estate taxes.

Section 12. Duties of Mayor: This Section largely restates and consolidates Sections 10, 11 and 12 of the current Charter. The Committee debated whether to delete the power of the Mayor to act as a judicial officer for the enforcement of municipal ordinances since the "Mayor's Court" has been inactive for a number of years and enforcement is adequately handled in the state courts at present. Ultimately, the Committee elected to retain these provisions so that City government would have this as an option in the future should it be deemed advantageous. The proposed Section

also permits the Council President to serve in the stead of the Mayor without the need for a written appointment should be Mayor be unavailable to perform one of his duties.

Section 13. Meetings and Procedures of Council: This Section authorizes Council to adopt rules of procedure and also authorizes the Council President to appoint another Council person to serve as presiding officer in his absence. It requires monthly Council meetings but gives Council the flexibility of determining when those meetings will take place. The provisions of the Delaware Freedom of Information Act 29 *Del. C.* §§10001 *et seq.* are incorporated by reference. Proposed ordinances would now require only one prior reading before adoption---current Charter Section 15 requires two prior readings. The Mayor's right to veto legislation---and Council's right to overturn the veto by a two-thirds majority vote---are retained.

Section 14. Powers of Council: This Section further elaborates on Council's authority to regulate streets, sidewalks, curbs and gutters as well as light, power, sewer and water. Some of these powers have been previously delegated (e.g., MSC handles water and power and New Castle County regulates sewer usage), but the point is that the City can elect to exercise its jurisdiction over such matters. This Section also permits Council to mandate by ordinance that adjacent property owners pay for the maintenance and replacement of sidewalks and curbing.

Section 15. Tax Remission: This Section permits the City to offer tax abatement incentives for new industrial or commercial property owners that may last for up to 10 years.

Section 16. Exhibitions Within the City: Council is given the power to license and regulate parades, circuses, festivals and other transient commercial events in the City. This provision would not affect the New Castle Farmers Market or Flea Market operations at Hares Corner.

Section 17. Road Tax: Council is empowered to tax for purposes of road, street and alley maintenance as necessary.

Section 18. Budget: This Section sets the first Monday in July as the deadline for adopting annual City budgets.

Section 19: Property Assessment Procedure: In this Section, the City adopts New Castle County's assessments rolls as its own with no independent City appeal process. Taxes remain due on July 1st annually with a 1.5% per month late charge imposed for payments after September 30th. Council is given authority to offer early payment discounts on taxes and exemptions for the disabled and senior citizens. The proposed section also imposes property liens in favor of the City for non-payment of taxes, Housing Code violation fines, vacant property fees, water and electrical charges due to MSC and similar fines and fees. The proposed Section permits debt actions to recover such fines and fees with the City's attorney's fees and also preserves the City's right to proceed via monition sale as in the existing Charter.

Section 20. Borrowing for Current Operating Expenses: Streamlining and modernizing the City's borrowing power was a special focus of the Committee. The Committee borrowed from the City of Middletown's charter to propose a three tiered analysis for City borrowing. This Section and proposed Section 21 address this important area. Proposed Section 20 deals with short term borrowing for operating expenses. In this case, Council is authorized to anticipate current revenues by borrowing without referendum. Any such borrowings must be repaid within thirteen (13) months this would authorize, for example, the City to borrow on a line of credit to anticipate tax revenues. This short term borrowing power is limited to a maximum of \$500,000.00. This borrowing may or may not be secured by the full faith and credit of the City. No City-wide referendum would be needed for such short term borrowing. Short term borrowing of this nature can be accomplished by a two-thirds resolution vote of Council.

Section 21. Borrowing for Capital Expenditures: Under this proposed Section, two additional tiers of borrowing procedures are established for long term bond type

obligations. In the first tier, Council may, by two-thirds resolution vote of all members of Council, borrow upon the full faith and credit of the City sums not to exceed 1.2% of the total assessed value of the real estate in the City; subject, however, to an overall limit on City borrowing capped at twenty percent (20%) of the total current assessed value. In other words, total City long term indebtedness (but excluding sums borrowed for short term expenses under Section 20) cannot exceed the twenty percent (20%) limitation. The total assessed value of City real estate is approximately \$250,000,000. 1.2% of that amount is roughly \$1,500,000. Twenty percent (20%) is roughly \$50,000,000. The Committee originally recommended borrowing up to 5% of assessed value under this provision, but Council determined to reduce this to 1.2%. Council has also added an important restriction on this non-referendum borrowing power such that it may not be used to borrow for construction of a pier at the end of Delaware Street.

The third and final tier of possible City borrowing relates to loans that would exceed 1.2% of the total assessed value of City real estate. In such cases a City-wide referendum would be required. In addition, the same twenty percent (20%) aggregate limitation on City loans would apply. This twenty percent (20%) overall limitation is consistent with the current City Charter.

Also noteworthy in subparagraph (e) of this Section is the authority to impose "impact fees" on new developments in the City as a means of offsetting additional municipal operational expense for roads, sidewalks, utilities, parking and parkland as well as fire and police protection services.

Section 22. Reserve Fund: This Section authorizes Council to establish a reserve fund dedicated toward retiring and redeeming any bonds the City may issue, at or before maturity.

Section 23. Survival of Power and Validation: This section reaffirms prior State legislative acts to establish the City of New Castle as well as all municipal powers previously granted to the City unless directly in conflict with the new Charter itself. All ordinances and resolutions previously adopted by Council, and all prior acts of City officials, are also reaffirmed.

Section 24. Severability Clause: This Section makes clear that if any portion of the new Charter is later deemed invalid, it will not affect other valid provisions of the new Charter or any actions taken thereunder.

Section 25. Construction of Provisions of Charter: This Section is intended to make clear that references to the male gender in the Charter shall also include the female gender and vice versa.